

## § 291.32

## 36 CFR Ch. II (7–1–16 Edition)

to a hearing and consent to the making of a decision on the record made at the hearing.

(2) Departmental counsel shall represent the Agency in the proceedings. Upon notice to the Authorized Officer of the assignment of an administrative law judge to the case, said counsel shall enter his/her appearance on behalf of the Agency and shall file all petitions and correspondence exchanges by the Agency and the respondent which shall become part of the hearing record. Thereafter, service upon the Agency shall be made to Departmental counsel.

(d) *Hearing administration.* (1) The administrative law judge shall have all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions in accordance with 5 U.S.C. 554 through 557.

(2) The transcript of testimony; the exhibits; and all papers, documents and requests filed in the proceedings shall constitute the record for decision. The administrative law judge shall render a written decision upon the record, which shall set forth his/her findings of fact and conclusions of law, and the reasons and basis therefore, and an assessment of a penalty, if any.

(3) The administrative law judge's decision shall become effective 30 calendar days from the date of this decision.

### **§ 291.32 Petition for judicial review; collection of unpaid assessments.**

(a) *Judicial review.* Any person against whom a final administrative decision is issued assessing a penalty may file a petition for judicial review of the decision in the U.S. District Court for the District of Columbia or in the district in which the violation is alleged to have occurred within the 30 calendar day period beginning on the date the decision was issued. Upon notice of such filing, the Secretary shall promptly file such a certified copy of the record on which the decision was issued. The court shall hear the action on the record made before the Secretary and shall sustain the action if it is supported by substantial evidence on the record considered as a whole. Judicial review is limited by the require-

ment to exhaust administrative remedies under 7 U.S.C. 6912(e).

(b) *Failure to pay.* Failure to pay a penalty assessed is a debt to the U.S. Government. If any person fails to pay a penalty within 30 calendar days after the final administrative decision and the person has not filed a petition for judicial review of the decision in accordance with paragraph (a) of this section; or after a court in an action brought in paragraph (a) of this section has entered a final judgment upholding the assessment of the penalty, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which the person if found, resides, or transacts business, to collect the penalty (plus interest at currently prevailing rates from the date of the final decision or the date of the final judgment, as the case may be). The district court shall have jurisdiction to hear and decide any such action. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty shall be required to pay, in addition to such amount and interest, attorney's fees and costs for collection proceedings. This section does not preclude the use of other collection methods such as Treasury offset, where appropriate.

### **§ 291.33 Use of recovered amounts.**

Penalties and/or restitution collected shall be available to the Authorized Officer and without further appropriation may be used only as follows:

(a) To protect, restore, or repair the paleontological resources and sites which were the subject of the action, and to protect, monitor, and study the resources and sites; and/or

(b) To provide educational materials to the public about paleontological resources, sites, and their protection; and/or

(c) To provide for the payment of rewards as provided in § 291.40.

### **§ 291.34 Criminal penalties.**

(a) A person who knowingly violates or counsels, procures, solicits, or employs another person to violate § 291.27